



Mr. Verne Walton

July 17, 1980

Mr. Robert R. Keeling

Mining Claims - Possessory Interest
Your memo Dated May 14, 1980

You ask if (under Board Rule 467) a possessory interest in a mining claim should be treated as one for reappraisal each year when the possessory interest holder files his annual proof of labor.

A holder of a mining claim must expend certain labor and money as a condition of continued right to the claim. The holder must file proof of such labor and expenditure with certain U.S. Government agencies. The holder can thus unilaterally perpetuate his possessory interest by satisfying these conditions. No new government permission is necessary. The scope of the right does not change, nor are new rights added, nor are new interests created. The holder has simply satisfied a condition for the continuation of the right acquired by the holder when the claim was filed. He has simply avoided defeasance.

An existing property is not reappraised for property tax purposes except when it changes ownership (Cal. Const. Art. XIII A, Sec. 2(a)). A change in ownership means a transfer of a present interest in real property (Rev. & Tax. Code §60). So the question must be whether the filing of the proof of labor constitutes a change in ownership.

A change in ownership in possessory interests is described in Revenue and Taxation Code Section 61(b) as:

"The creation, renewal, sublease, or assignment of a taxable possessory interest in tax exempt real property for any term."

And Board Rule 467 provides that possessory interests which are:

"...renewed, extended, subleased or assigned for any term shall be appraised at their full value

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as of the date of the renewal, extension, or as of the date the sub-lessee or assignee obtains the right to occupancy or use of the property".

So, was the act of filing the proof of labor a "creation, renewal, sublease or assignment of a possessory interest" which constitutes a change of ownership within the meaning of California Constitution, Article XIII A, Section 2(a), Revenue and Taxation Code Section 60, or Rule 467?

Examination of California Constitution, Article XIII A (the ultimate authority) leads me to conclude a reappraisal of a possessory interest is not triggered until there is a "change of ownership". The term "change of ownership" is not defined, but the Legislature describes it to mean "...a transfer of interest in real property..." (§60). So those operative words from Section 61 and Rule 467 must mean a transfer of interest in real property, notwithstanding what those words may mean in the context of other statutes or other law. They must connote a change of ownership within the meaning of the California Constitution, Article XIII A.

The definition for change of ownership has been reduced to a three part test:

1. It transfers a present interest.
2. It transfers the beneficial interest of the property.
3. The property rights transferred are substantially equivalent in value to the fee interest.

(See Property Tax Assessment, Implementation of Proposition 13, Volume 1, October 29, 1979, Prepared by the Staff of the Assembly Revenue and Taxation Committee, p. 19.)

The filing of a proof of labor does not transfer a present interest, nor does it transfer the beneficial interest, nor does it transfer a right equivalent in value to the fee interest. In my opinion, no rights at all are transferred. The holder's act only perpetuates the right he already holds. It appears the act of filing is merely one of avoiding defeasance, i.e., the holder must do certain acts to avoid losing his property right. There is no act that creates new property rights. There is only an act which perpetuates existing rights.

I conclude the key elements calling for a reappraisal of an existing possessory interest in a mining claim, under

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either Section 61(b) or Rule 467, are:

1. The existing right must somehow terminate, either through action of the holder or of government, or through termination via the terms of the right, and then the holder reacquires the right.
2. The holder subleases or assigns his right to another.

I conclude the filing of the proof of labor does not constitute a change of ownership and, therefore, does not trigger a reappraisal of the possessory interest.

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